

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark H. Theno

Examiner: Yong Soo Chong

Serial No.: 09/691,896

Group Art Unit: 1617

Filed: October 19, 2000

Docket: 1335.001US1

For: HYDROGEL VAPOR DISPENSER

Customer No. 21186

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on May 19, 2006, from the Final Rejection of claims 1, 3-8, 10-14, 17-31, 40, and 42-44 of the above-identified application, as set forth in the Final Office Action mailed on March 20, 2006.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$250.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellant respectfully request consideration and reversal of the Examiner's rejections of pending claims.

1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is Appellant, Mark H. Theno.

2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present appeal.

3. STATUS OF THE CLAIMS

The present application was filed on October 19, 2000 with claims 1-39. As of the filing of the present Appeal Brief, claims 38-39 stand withdrawn from consideration, claims 2, 9, 15-16, 32-37 and 41 were previously canceled, claims 1, 3-8, 10-14, 17-31, 40 and 42-44 stand finally rejected, and are the subject of the present Appeal.

Appellant reserves the right to pursue withdrawn claims 38 and 39 later continuation or divisional application.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action dated March 20, 2006.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The claims that are the subject of this Appeal include independent claims 1, 10, 25, 29, 40, and 42-44. Claims 1, 10, 40, and 42-44 each recite a vapor emitting patch. Claims 25 and 29 each recite a method. The following summary does not provide an exhaustive or exclusive view of the claimed subject matter, and Appellant refers to the appended claims for a complete statement of the claimed subject matter. References to the specification and drawings are provided as examples, and are not intended to indicate that these references are the only references from the specification and drawings that can be applied to the claims.

Independent Claim 1

Claim 1 recites a vapor emitting patch. The vapor emitting patch (100) includes a base portion (101), a cellular structure (152), and a vapor emitting material (154). The base portion includes a hydrogel (114). The cellular structure includes a foamed polyolefin and contacts the base portion. The cellular structure includes a vapor emitting portion (150). A vapor emitting material is a drug and is stored within the vapor emitting portion. See FIG. 1 and specification on page 3, lines 7-20; and page 6, lines 10-12.

Independent Claim 10

Claim 10 recites a patch. The patch (100) includes a first surface and an opposing surface, a releasable layer (123a or 123b) adhered to the hydrogel (114), a foam pad (152), and a vapor emitting material (154). The foam pad has a cellular structure which includes foamed polyolefin. The pad has a top surface (152a) and a bottom surface (152b), wherein the bottom surface of the pad is affixed to the hydrogel. The vapor emitting material can be drugs, pheromones, or perfumes received by the cells of the foam pad. The vapor emitting material is added to the cells prior to use. See FIG. 1 and specification on page 2, lines 1-9; page 3, lines 7-20; page 6, lines 10-12; page 7, line 27 - page 8, line 4.

Independent Claim 25

Claim 25 recites a method for releasing a vapor. The method includes a step of providing a patch. The patch includes an adhesive (114), a base substrate (120), a cellular structure (152), and a vapor emitting material (154). The adhesive includes a first surface (114a) and an opposing surface (114b). The base substrate includes a hydrogel and is adhered to the opposing surface of the adhesive. The cellular structure includes a foamed polyolefin, contacts the base portion, and also includes a vapor emitting portion. The vapor emitting material is selected from the group consisting of drugs, pheromones, and perfumes stored within the cellular structure. The method also includes steps of removing the base substrate, attaching the adhesive to a surface, exposing the pad to air, and releasing the vapor. See FIGS. 1-3, and specification on page 2, lines 1-9; page 3, lines 7-24; page 6, lines 10-12; page 7, lines 3 – 15; page 7, line 27 - page 8, line 4.

Independent Claim 29

Claim 29 recites a method for releasing a vapor. The method includes a step of providing a patch. The patch includes an adhesive (114), a base substrate (120), a vapor emitting portion (150). The adhesive includes a first surface (114a) and an opposing surface (114b). The base substrate includes a hydrogel and is adhered to the opposing surface of the adhesive. The vapor emitting portion includes a cellular structure, comprising foamed polyolefin, and a vapor emitting material is stored within the cellular structure. The vapor emitting portion is affixed to the first surface of the adhesive. The method also includes steps of exposing the pad to air; and releasing the vapor. See FIGS. 1-3, and specification on page 2, lines 1-9; page 3, lines 7-24; page 6, lines 10-12; page 7, lines 3 – 15; page 7, line 27 - page 8, line 4.

Independent Claim 40

Claim 40 recites a patch. The patch (100) includes an adhesive first layer, a second layer, a foam pad (152), and at least two vapor emitting materials (154). The first layer includes a first surface and an opposing surface with the surfaces having areas. The second layer including a hydrogel is releasably adhered to and covering the entire area of the opposing surface of the first layer. The foam pad, comprising a foamed polyolefin, have portions and includes a top surface

(152a) and a bottom surface (152b) with one of the pad surfaces attached to and covering an area of the first surface of the first layer. The at least two vapor emitting materials are separately stored in at least two separate portions of the pad. See FIGS. 1-3, and 8, and specification on page 2, lines 2-13; page 3, lines 7-24; page 5, lines 2-5; page 6, lines 10-12.

Independent Claim 42

Claim 42 recites a vapor emitting patch. The patch (100) includes a base portion (101), a cellular structure (152), and a vapor emitting material (154). The base portion includes a hydrogel. The cellular structure, comprising a foamed polyolefin, contacts the base portion and has a vapor emitting portion. The vapor emitting material is a pheromone stored within the vapor emitting portion. See FIG. 1, and specification on page 3, lines 7-20; and page 6, lines 10-12.

Independent Claim 43

Claim 43 recites a vapor emitting patch. The patch (100) includes a base portion (101), a cellular structure (152), and a vapor emitting material (154). The base portion includes a hydrogel. The cellular structure, comprising a foamed polyolefin, contacts the base portion and has a vapor emitting portion. The vapor emitting material is a perfume stored within the vapor emitting portion. See FIG. 1, and specification on page 3, lines 7-20; and page 6, lines 10-12.

Independent Claim 44

Claim 44 recites a vapor emitting patch. The patch (100) includes a base portion (101), a cellular structure (152), and a vapor emitting material (154). The base portion includes a hydrogel. The cellular structure, comprising a foamed polyolefin, contacts the base portion and has a vapor emitting portion. The vapor emitting material has a low vapor pressure and is stored within the vapor emitting portion. See FIG. 1, and specification on page 3, lines 7-20; page 4, lines 1-14; and page 6, lines 10-12.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40, and 42-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cartmell et al. (U.S. Patent No. 5,501,661) in view of Fischel-Ghodsian et al. (U.S. Patent No. 5,455,043).

Claims 13, 14, 21, 22, 28, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cartmell et al. (U.S. Patent No. 5,501,661) in view of Fischel-Ghodsian et al. (U.S. Patent No. 5,455,043) as applied to claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40, and 42-44 as above, and further in view of Wick et al. (U.S. Patent 6,010,715).

7. ARGUMENT

A. Claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40, and 42-44 are not obvious under 35 U.S.C. § 103(a) and are not unpatentable over Cartmell et al. (U.S. Patent No. 5,501,661) in view of Fischel-Ghodsian et al. (U.S. Patent No. 5,455,043).

1. Claim 1:

Claim 1 is as follows:

A vapor emitting patch comprising:
a base portion comprising a hydrogel;
a cellular structure, comprising a foamed polyolefin, contacting the base portion, the cellular structure comprising a vapor emitting portion; and
a vapor emitting material that is a drug stored within the vapor emitting portion.
Independent claims 10, 25, 29, 40, 42, 43 and 44, and all dependent claims also include these elements.

Appellant respectfully maintains that Cartmell and Fischel-Ghodsian, each alone or in combination, do not provide the subject matter recited in independent claim 1. The Cartmell et al. patent, 5,501,661, describes a dressing for a wound that includes a hydrogel pad and a porous material overlaying the hydrogel and acting as an adhering layer that adheres the hydrogel to a wound without a use of an adhesive. However, in Cartmell, there is no vapor emitting material stored within a vapor emitting portion as is claimed in claim 1.

The Examiner has argued that there must be some sort of material transferred from a wound to the environment and named, oxygen. However, oxygen is not a vapor. It is a gas. Furthermore, the teaching of Cartmell is contrary to the vapor emitting patch of claim 1. This is what the Cartmell patent states:

“The wound dressing product herein can be manufactured to any desirable size to provide a thin-film, fluid-absorbing dressing for a wound of any size. The wound dressing herein is conformable, adhesive around its perimeter portion, and nonadhesive over the wound site. The present invention also includes a moisture- and

vapor-permeable porous layer which permits the transpiration of moisture through the wound dressing.”

The “transpiration of moisture” functionality of Cartmell et al. teaches away from the device embodiments claimed which include “a vapor emitting material stored within the vapor emitting portion,” and indicate that the storage of a vapor emitting material within the Cartmell et al. bandage is undesirable.

The passage relied upon by the Examiner indicates that oxygen passes through the bandage which is described in Cartmell et al. However, oxygen is a gas within the air and is not a “vapor emitting material” as suggested by the Examiner. The Appellant asserts that an accumulation of vaporous material within the bandage of Cartmell et al. is not a desirable consequence of using the Cartmell et al. bandage because the vaporous material would be coming from the wound. There is no motivation for combining with any other reference to achieve this result.

Because the application of the Cartmell et al device, is a wound dressing, any vapor exchange occurs after the device is applied. There is no vapor emitting material added to the device prior to applying to a wound. Further, there is no suggestion that the feature of a “vapor emitting material stored within the vapor emitting portion” would be useful or desirable.

Furthermore, Appellant respectfully maintains that Fischel-Ghodsian et al. (U.S. Patent No. 5,455,043) describes a use of a hydrogel or anything like a hydrogel as claimed in claim 1. There is no suggestion to combine the references either. The Examiner has argued that the “motivation to substitute the polyolefin foam of Cartmell et al. with the polyolefin foam taught by Fischel-Ghodsian et al. is because of the increased porosity of the cell sizes in the foam.” The Appellant asserts that the Examiner is using the claims herein to provide the hindsight motivation because the Examiner has failed to cite a passage in the Cartmell et al. patent that shows that Cartmell et al. cared about increased porosity of cell sizes in the foam. Here is what the Cartmell patent states about the backing layer in col. 2, lines 53-57:

“The backing layer possesses sufficient porosity to allow an adhesive contact to be made between the backing layer and the hydrogel material present on the first side of the support layer.”

The motivation for adjusting porosity in the Cartmell et al. patent is altering the degree of contact with the hydrogel. The motivation is not related at all to adjusting vaporization of a vapor emitting material within a vapor emitting portion of the cellular structure as is claimed. This is because the Cartmell et al patent does not describe a device with a vapor emitting material. Why is “increased porosity” important to the Cartmell et al device? Why would Cartmell et al. have been motivated to increase porosity? The Examiner has failed to cite the suggestion in the Cartmell et al. patent for “increasing porosity of the backing layer” The Examiner has argued that references cannot be attacked separately where rejections are based upon a combination. However, there must be something that the Examiner can point to in each reference to suggest combination with the other reference.

The Fischel-Ghodsian patent, 5,455,043 (‘043), describes a device for releasing vapors in a controlled manner. The device includes a cellular portion for emitting vapor and a base, to which the cellular portion is adhered. The base is described as being a “laminate that consists of a metal foil lined polymer. The polymer may be any polymer that is compatible with the active compound. Suitable candidate polymers include polyethylene terephthalate, high density polyethylene, low density polyethylene, polypropylene, and polyvinylchloride and polyethylene/aluminized polyester/ethylene vinyl acetate.”

The ‘043 patent does not describe a use of a hydrogel or anything like a hydrogel. Additionally, Appellant asserts that there is no motivation to combine a chemical release structure, including a transdermal, with a wound dressing to obtain the claimed embodiments of the invention. As discussed above, there is no teaching in Cartmell suggesting a desirability of storing a vapor emitting material in a device prior to application. To the contrary, Cartmell et al. teaches away from this feature. Thus, the Cartmell et al. and Fischel-Ghodsian patents do not suggest combination and the references do not render the claimed invention embodiments obvious.

2. Claims 3-8, 10-12, 17-20, 23-27, 29-30, 40, and 42-44:

The references cited by the Examiner do not render claims 3-8, 10-12, 17-20, 23-27, 29-30, 40, and 42-44 obvious for reasons discussed for claim 1. The claims 3-8, 10-12, 17-20, 23-27, 29-30, 40 and 42-44 include the same elements discussed for claim 1.

B Claims 13, 14, 21, 22, 28, and 31 are not obvious under 35 U.S.C. § 103(a) as being unpatentable over Cartmell et al. (U.S. Patent No. 5,501,661) in view of Fischel-Ghodsian et al. (U.S. Patent No. 5,455,043) as applied to claims 1, 3-8, 10-12, 17-20, 23-27, 29-30, 40, and 42-44 as above, and further in view of Wick et al. (U.S. Patent 6,010,715). In the following argument, the requirements for a §103 rejection are provided first, and then the §103 rejections are discussed.

1. Claims 13 and 14:

Claims 13 and 14 are dependent upon claim 10. Claim 10 is as follows:

A patch comprising:

a hydrogel comprising a first surface and an opposing surface;

a releasable layer adhered to the hydrogel;

a foam pad comprising a cellular structure comprising foamed polyolefin, the pad comprising a top surface and a bottom surface wherein the bottom surface of the pad is affixed to the hydrogel; and

a vapor emitting material selected from the group consisting of drugs, pheromones, and perfumes received by the cells of the foam pad wherein the vapor emitting material is added to the cells prior to use.

Appellant respectfully maintains that Cartmell and Fischel-Ghodsian, each alone or in combination, do not provide the subject matter recited in independent claim 10. The Cartmell et al. patent, 5,501,661, describes a dressing for a wound that includes a hydrogel pad and a porous material overlaying the hydrogel and acting as an adhering layer that adheres the hydrogel to a wound without a use of an adhesive. However, in Cartmell, there is no vapor emitting material stored within a vapor emitting portion as is claimed in claim 10.

The Examiner has argued that there must be some sort of material transferred from a wound to the environment and named, oxygen. However, oxygen is not a vapor. It is a gas. This is what the Cartmell patent states:

“The wound dressing product herein can be manufactured to any desirable size to provide a thin-film, fluid-absorbing dressing for a wound of any size. The wound dressing herein is conformable, adhesive around its perimeter portion, and nonadhesive over the wound site. The present invention also includes a moisture- and vapor-permeable porous layer which permits the transpiration of moisture through the wound dressing.”

The “transpiration of moisture” functionality of Cartmell et al. teaches away from the device embodiments claimed which include “a vapor emitting material stored within the vapor emitting portion,” and indicate that the storage of a vapor emitting material within the Cartmell et al. bandage is undesirable.

The passage relied upon by the Examiner indicates that oxygen passes through the bandage which is described in Cartmell et al. However, oxygen is a gas within the air and is not a “vapor emitting material” as suggested by the Examiner. The Appellant asserts that an accumulation of vaporous material within the bandage of Cartmell et al. is not a desirable consequence of using the Cartmell et al. bandage because the vaporous material would be coming from the wound. There is no motivation for combining with any other reference to achieve this result.

Because of the application of the Cartmell et al device, is a wound dressing, any vapor exchange occurs after the device is applied. There is no vapor emitting material added to the device prior to applying to a wound. Further, there is no suggestion that the feature of a “vapor emitting material stored within the vapor emitting portion” would be useful or desirable.

Furthermore, Appellant respectfully maintains that Fischel-Ghodsian et al. (U.S. Patent No. 5,455,043) describes a use of a hydrogel or anything like a hydrogel as claimed in claim 10. There is no suggestion to combine the references either. The Examiner has argued that the “motivation to substitute the polyolefin foam of Cartmell et

al. with the polyolefin foam taught by Fischel-Ghodsian et al. is because of the increased porosity of the cell sizes in the foam.” The Appellant asserts that the Examiner is using the claims herein to provide the hindsight motivation because the Examiner has failed to cite a passage in the Cartmell et al. patent that shows that Cartmell et al. cared about increased porosity of cell sizes in the foam. Here is what the Cartmell patent states about the backing layer in col. 2, lines 53-57:

“The backing layer possesses sufficient porosity to allow an adhesive contact to be made between the backing layer and the hydrogel material present on the first side of the support layer.”

The motivation for adjusting porosity in the Cartmell et al. patent is altering the degree of contact with the hydrogel. The motivation is not related at all to adjusting vaporization of a vapor emitting material within a vapor emitting portion of the cellular structure as is claimed. This is because the Cartmell et al patent does not describe a device with a vapor emitting material. Why is “increased porosity” important to the Cartmell et al device? Why would Cartmell et al. have been motivated to increase porosity? The Examiner has failed to cite the suggestion in the Cartmell et al. patent for “increasing porosity of the backing layer” The Examiner has argued that references cannot be attacked separately where rejections are based upon a combination. However, there must be something that the Examiner can point to in each reference to suggest combination with the other reference.

The Fischel-Ghodsian patent, 5,455,043 (‘043), describes a device for releasing vapors in a controlled manner. The device includes a cellular portion for emitting vapor and a base, to which the cellular portion is adhered. The base is described as being a “laminate that consists of a metal foil lined polymer. The polymer may be any polymer that is compatible with the active compound. Suitable candidate polymers include polyethylene terephthalate, high density polyethylene, low density polyethylene, polypropylene, and polyvinylchloride and polyethylene/aluminized polyester/ethylene vinyl acetate.”

Neither the ‘043 patent nor the Wick patent describes a use of a hydrogel or anything like a hydrogel. Additionally, Appellant asserts that there is no motivation to

combine a chemical release structure, including a transdermal, with a wound dressing to obtain the claimed embodiments of the invention. As discussed above, there is no teaching in Cartmell suggesting a desirability of storing a vapor emitting material in a device prior to application. To the contrary, Cartmell et al. teaches away from this feature. Thus, the Cartmell et al. and Fischel-Ghodsian and Wick patents do not suggest combination and the references do not render the claimed invention embodiments obvious.

2. Claims 21 and 22:

Claims 21 and 22 depend from claim 40, which is as follows:

A patch comprising:

- an adhesive first layer comprising a first surface and an opposing surface with the surfaces having areas;

- a second layer, comprising a hydrogel, releasably adhered to and covering the entire area of the opposing surface of the first layer;

- a foam pad, comprising a foamed polyolefin, having portions and comprising a top surface and a bottom surface with one of the pad surfaces attached to and covering an area of the first surface of the first layer; and

- at least two vapor emitting materials separately stored in at least two separate portions of the pad.

For reasons discussed above, claim 40 is not rendered obvious by references cited by the Examiner. Because a case for obviousness has not been made, Appellant asserts that the dependent claims are not obvious either.

3. Claims 28 and 31:

Claims 28 is dependent upon claim 25 and claim 31 is dependent upon claim 29. For reasons discussed above, claims 25 and 29 are not rendered obvious by references cited by the Examiner. Because a case for obviousness has not been made, Appellant asserts that the dependent claims are not obvious either.

C. Requirements for a §103 Rejection

MPEP §§2142-43 identifies the requirement for a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See also In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Prior Art Reference(s) Must Teach Or Suggest All The Claim Limitations

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).”

Suggestion Or Motivation To Modify The Reference Or Combine References

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. “The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the

nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

“The factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with.” *Lee*, at 1343. “[The] factual question of motivation to combine is material to patentability, and could not be resolved on subjective belief and unknown authority.” *Lee*, at 1343-44. “The board cannot rely on conclusory statement when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.” *Lee*, at 1343. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Dependent Claims

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

In General

For reasons provided above, Appellant respectfully requests withdrawal of the §103 rejections of claims 1-6, 15-20, and 28-32, and reconsideration and allowance of these claims.

8. SUMMARY

It is respectfully submitted that the art cited does not render claims 1, 3-8, 10-14, 17-31, 40 and 42-44 obvious as alleged, and therefore the Appellant submits that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,

Mark H. Theno

By his Representatives,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Appeal Brief – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 20th day of November 2006.

JONATHAN FERGENSON

Name

Jonathan Fergenson

Signature

CLAIMS APPENDIX

1. A vapor emitting patch comprising:
a base portion comprising a hydrogel;
a cellular structure, comprising a foamed polyolefin, contacting the base portion, the cellular structure comprising a vapor emitting portion; and
a vapor emitting material that is a drug stored within the vapor emitting portion.
3. The patch of claim 1 wherein the base portion further comprises a film layer wherein the film layer reversibly adheres to the hydrogel.
4. The patch of claim 3 wherein the film layer is removable.
5. The patch of claim 1 wherein the vapor emitting portion comprises a pad.
6. The patch of claim 5 wherein the pad comprises a material selected from the group of materials consisting of polyolefins, acrylic adhesives and hydrogels.
7. The patch of claim 5 wherein the vapor emitting portion comprises a protective material that overlays the pad.
8. The patch of claim 7 wherein the protective material comprises a mesh material or a non-woven material.
10. A patch comprising:
a hydrogel comprising a first surface and an opposing surface;
a releasable layer adhered to the hydrogel;

a foam pad comprising a cellular structure comprising foamed polyolefin, the pad comprising a top surface and a bottom surface wherein the bottom surface of the pad is affixed to the hydrogel; and

a vapor emitting material selected from the group consisting of drugs, pheromones, and perfumes received by the cells of the foam pad wherein the vapor emitting material is added to the cells prior to use.

11. The patch of claim 10 wherein the pad comprises an open cell foam.

12. The patch of claim 10 and further comprising a protective member sealed to the top surface of the pad.

13. The patch of claim 10 further comprising a layer attached to the hydrogel wherein the layer attached to the hydrogel is a film, a foil or a paper.

14. The patch of claim 13 wherein the film layer comprises a material selected from the group of materials consisting of polyolefins, polyamides, cellulose, polyethylene terephthalates, or any mixture thereof.

17. The patch of claim 40 further comprising a third layer wherein the third layer is releasably affixed to and covers the uncovered areas of the first surface of the first layer.

18. The patch of claim 40 further comprising a protective layer wherein the protective layer is attached to the top surface of the pad.

19. The patch of claim 40 wherein the first layer comprises an adhesive from which a release layer can be released.

20. The patch of claim 19 wherein the adhesive comprises a hydrogel.

21. The patch of claim 17 wherein the third layer is a film, a foil or a paper.
22. The patch of claim 21 wherein the film comprises a material selected from the group consisting of polyolefins, polyamides, cellulose, polyethylene terephthalates, or any mixture thereof.
23. The patch of claim 40 wherein the second layer comprises a removable and reattachable base substrate.
24. The patch of claim 40 wherein the pad comprises a synthetic or natural open cell foam.
25. A method for releasing a vapor, comprising:
providing a patch comprising:
an adhesive comprising a first surface and an opposing surface,
a base substrate, comprising a hydrogel, adhered to the opposing surface of the adhesive,
a cellular structure, comprising a foamed polyolefin, contacting the base portion,
the cellular structure comprising a vapor emitting portion; and
a vapor emitting material selected from the group consisting of drugs, pheromones, and perfumes stored within the cellular structure;
removing the base substrate;
attaching the adhesive to a surface;
exposing the pad to air; and
releasing the vapor.
26. The method of claim 25 wherein attaching the adhesive to a surface comprises attaching the adhesive to skin.

27. The method of claim 25 wherein removing the base substrate comprises removing the base substrate from the opposing surface of the adhesive.

28. The method of claim 25 wherein exposing the pad to air includes removing the patch from a packaging.

29. A method for releasing a vapor comprising:
providing a patch comprising:
an adhesive comprising a first surface and an opposing surface,
a base substrate, comprising a hydrogel, adhered to the opposing surface of the adhesive, and
a vapor emitting portion comprising a cellular structure, comprising foamed polyolefin, and a vapor emitting material stored within the cellular structure comprising the vapor emitting portion affixed to the first surface of the adhesive;
exposing the pad to air; and
releasing the vapor.

30. The method of claim 29 wherein providing a patch includes removing the base substrate and attaching the adhesive to a surface.

31. The method of claim 29 wherein exposing the pad to air includes removing the patch from a packaging.

40. A patch comprising:
an adhesive first layer comprising a first surface and an opposing surface with the surfaces having areas;
a second layer, comprising a hydrogel, releasably adhered to and covering the entire area of the opposing surface of the first layer;

a foam pad, comprising a foamed polyolefin, having portions and comprising a top surface and a bottom surface with one of the pad surfaces attached to and covering an area of the first surface of the first layer; and

at least two vapor emitting materials separately stored in at least two separate portions of the pad.

42. A vapor emitting patch comprising:

a base portion comprising a hydrogel;

a cellular structure, comprising a foamed polyolefin, contacting the base portion, the cellular structure comprising a vapor emitting portion; and

a vapor emitting material that is a pheromone stored within the vapor emitting portion.

43. A vapor emitting patch comprising:

a base portion comprising a hydrogel;

a cellular structure, comprising a foamed polyolefin, contacting the base portion, the cellular structure comprising a vapor emitting portion; and

a vapor emitting material that is a perfume stored within the vapor emitting portion.

44. A vapor emitting patch comprising:

a base portion comprising a hydrogel;

a cellular structure, comprising a foamed polyolefin, contacting the base portion, the cellular structure comprising a vapor emitting portion; and

a vapor emitting material having a low vapor pressure stored within the vapor emitting portion.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.